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 Official Court Reporter - U.S.D.C.
 1005 United States Courthouse
 300 South Fourth Street
 Minneapolis, Minnesota 55415
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1 (11:00 a.m.)

2 P R O C E E D I N G S

3 I N O P E N C O U R T

4 (Defendant present)

5 THE COURT: Good morning. Please be seated.

6 THE CLERK: The case before the Court is United
7 States vs. Thomas James Martin, Criminal Case 02-127.

8 THE COURT: Let's see. Let's begin by noting our
9 appearances. I think we'll start at the plaintiff's table.

10 Mr. Genrich?

11 MR. GENRICH: Good morning, your Honor. David
12 Genrich for the Government. At the table with me are Labor
13 Investigators Guy Heidenreich and Sheldon Rinehart.

14 THE COURT: Thank you. Good morning.

15 Mr. Engh.

16 MR. ENGH: Paul Engh on behalf of Mr. Martin.
17 He's here today, your Honor. Thank you.

18 THE COURT: Good morning, Mr. Martin.

19 THE DEFENDANT: Good morning, your Honor.

20 THE COURT: It's been awhile since I've seen you.

21 THE DEFENDANT: Yes.

22 THE COURT: The matter before us today, as we all
23 I know are well aware, is Mr. Martin's request that he be
24 allowed an exemption from the disqualification period to
25 serve as a consultant or advisor to a labor organization.

1 Let's see. And in terms of procedure or pattern,
2 I don't think there are enough of these motions -- this is
3 the first of mine -- to have an exact protocol, but I think
4 what -- I assume the defendant has the burden of proof on
5 this since the exemption is statutory.

6 So, I think, Mr. Engh, what I'll do is allow each
7 side about 15 minutes in whichever way you might want to
8 wish to proceed. I know Mr. Martin probably has something
9 he wants to say personally and you've got a bit of an
10 argument, so you can slice up your 15 minutes in whatever
11 way you think makes sense.

12 MR. ENGH: Okay. Well, what we'd like to do then
13 is have Mr. Martin make a statement. He's jotted his
14 thoughts down.

15 THE COURT: Sure.

16 MR. ENGH: We have one exhibit, which are the
17 letters we submitted to the Department of Labor in
18 conjunction with our request, and then I'll follow up with a
19 short argument with the time allotted.

20 THE COURT: All right. I think that makes sense.

21 Mr. Martin, would you be more comfortable to be at
22 the lectern? Or if you'd rather sit on the witness stand,
23 either way is fine with me.

24 THE DEFENDANT: Your Honor, I think I'd be more
25 comfortable at the lectern here.

1 THE COURT: That's fine.

2 MR. ENGH: I should add these are Mr. Martin's
3 words. He's a bit nervous and so he's got an outline for
4 you.

5 THE COURT: Not a problem.

6 MR. ENGH: If he has to read to get through it,
7 he'll have to, but that's kind of what we're going to do.

8 THE COURT: Whatever works for you. That's fine.

9 THE DEFENDANT: Thank you.

10 THE COURT: And take your time. If you'd like to
11 pour yourself a glass of water so that you're set, that
12 would be fine too.

13 THE DEFENDANT: Good morning, your Honor. I stand
14 before you today not to plead an argument, but to show and
15 to tell you about a changed man.

16 Your Honor, I'd like to thank you very much for
17 seeing me today and taking the time. The last time I saw
18 you I stood before you a broken man, never imagining the
19 journey that I would be on. I vowed to myself I would never
20 be in a courtroom again, but today here I am, not for any
21 wrongdoing, but to request an opportunity for a future for
22 me, a changed man.

23 Going to prison was a very -- was the darkest time
24 in my life. I can remember like it was yesterday, riding up
25 to Duluth, the snow was blowing, the sleet was coming down.

1 I thought my life was over. Thinking of the months ahead of
2 me, there appeared to be no end in sight and there would be
3 nothing left for me or of me when I finally got out.

4 Prison was a very humbling, gut-wrenching
5 experience that took away my dignity, my pride, my freedom,
6 and my choices. It isolated me from my family and my
7 friends. Until that day I had never been afraid of
8 anything, but then on that day I can remember I cried as we
9 drove to prison.

10 I will never forget the looks on my father's, my
11 wife's, or my children's faces, or the shame of having my
12 grandchildren visiting me in prison. I had a lot of time to
13 think about my life, how I had spun out of control,
14 overtime, working 14 hours a day, destroying my first
15 marriage, really taking no time to think. It became
16 all-consuming, my job did, and I just let it happen over
17 time.

18 Prison was a very and lonely dark time period for
19 me, though as time went on it also gave me time to think
20 about who I'd become and who I really wanted to be, what I
21 needed versus what I wanted, where I had failed and who I
22 had failed, and not only myself, but the people who loved
23 and believed in me.

24 There is so much time in prison, so much downtime.
25 Downtime is something I never had much of before. Prison is

1 downtime. It forces you to look within and asking yourself
2 questions, tough questions about who and what you are, what
3 you've become and where you went wrong.

4 You keep it -- you get to a very low point,
5 disliking, even hating yourself. I had to dig deep. If I
6 had to -- I had a lot of time to think about my actions,
7 both good and bad, what changes I needed to make in my life
8 and accept what I had done, the people I had wronged and the
9 people's trust that I abused. I didn't like myself, so how
10 could others like me, let alone love me.

11 At a point I had to acknowledge and accept who and
12 what I had become, but that didn't mean I couldn't change.
13 I even began to welcome this time. I came to an inner peace
14 within me. I came to understand and respect the rule of
15 law, grateful of the little things that I never stopped to
16 think about previously and how precious my family and my
17 friends were. I came to realize how fast my life was
18 passing, yet never stopping to think about what was most
19 important. Excuse me.

20 THE COURT: Remind me -- I know the sentence was
21 24 months. How much did you end up actually serving?

22 THE DEFENDANT: Nineteen days, 10 months, your
23 Honor.

24 THE COURT: Okay.

25 MR. ENGH: No, it was 19 months, ten days.

1 THE DEFENDANT: What did I say?

2 THE COURT: Nineteen months, 10 days.

3 THE DEFENDANT: Oh, 19 months, 10 days.

4 THE COURT: Close to 20 months.

5 THE DEFENDANT: I came to realize how fast my life
6 was passing, yet never stopping to think about what was
7 important, being true to yourself or your beliefs, being
8 honest with myself or who I -- if I can't be honest with
9 myself, how can I be honest with others?

10 I prayed this would not kill my father, as he was
11 84 at the time and we were as close as father and son could
12 be. We were best friends. I was blessed with a loving wife
13 that came to see me every weekend and sometimes twice on one
14 weekend over the whole 19 months. She would bring my dad
15 when he was up to it and other unfailing friends that I can
16 never thank enough came to see me.

17 The saying "You never know who your friends are"
18 is true. I'm a very lucky person. I know my friends and
19 what a precious gift they are. Most importantly, I wanted
20 and needed to prove to myself, my family and my friends and
21 those that lost trust in me that I can do better, be better
22 than who I was.

23 Leaving prison gave me opportunities. You can't
24 imagine how you can appreciate the simplest things: the
25 love of my wife, my father, my children, my grandchildren

1 and my friends who came -- who cared so much about me. I
2 was blessed to have three wonderful years with my father
3 before he passed away, but I can still see the
4 disappointment in my father's eyes. It haunts me to this
5 day.

6 THE COURT: Your dad was a union man too, right?

7 THE DEFENDANT: Yes, your Honor.

8 Before I stopped -- before -- my whole family is
9 union, your Honor.

10 THE COURT: Take your time. It's all right.

11 (Pause)

12 THE DEFENDANT: Leaving prison gave me many
13 opportunities. You can appreciate the simplest -- okay. I
14 did that.

15 But it still haunts me today, the look in my
16 father's eyes, the disappointment in his voice.

17 Before I never stopped to think about what freedom
18 really meant as it can be taken for granted so easily. I
19 look around my community, my city, my state, my country that
20 I live in and I realize how blessed I am. Until you have
21 everything stripped from you: your reputation, your
22 finances, your privacy and your freedom, though done by my
23 own doings, I had never really had much thought in it. I
24 took it for granted. I was committed to my transition and
25 my probation, working with my probation officer, Lester

1 Harris, following all the rules and three years of probation
2 with no problems.

3 I started a business of my own as a home
4 inspector, but as you know, the housing market is at record
5 lows. I'm a very young 63-year-old man when it comes to
6 attitude and energy, but as many others in the construction
7 trade, my body shows the scars of working with the tools.
8 Both my biceps have been ripped off the bones and surgically
9 reattached. Unfortunately, one was not successful. With
10 nerve damage in my arm, I do not have the range of motion
11 and unable to hold many tools properly. I'm also in need of
12 a complete right shoulder replacement.

13 Today I stand before you again, your Honor. I'm
14 proud to say I'm a construction worker, a plumber, but most
15 importantly a changed man, a better man than the one that
16 stood before you six years ago. The only thing I know is
17 the construction trades. My family, my friends, are all in
18 the trades. It is something that is in my blood. I just
19 can't let go. I feel I have so much that I can offer to the
20 industry even though the market of high unemployment today
21 is approaching 50 percent. I have ideas and a drive that I
22 think I can make a difference.

23 I would like to have that chance to help put my
24 members back to work so they can provide for their families.
25 I would also like to have a chance to go back to work and

1 redeem myself with the many people that once trusted me. I
2 hope to prove that they can again.

3 I know I have done wrong, your Honor, and am truly
4 sorry for what I have done. I believe I have served my time
5 for what I have done. With the continued restrictions that
6 have been imposed upon me, I am unable to pursue any type of
7 career in the industry that I know and love other than
8 working with the tools which I can no longer do.

9 I hope and pray the Court will see that I have
10 served my time in prison, completed my probation and that I
11 am truly sorry for what I have done and all of those I have
12 hurt. I hope some day to be able to forgive myself, as I
13 blame nobody but myself. The hard part is I have not been
14 able to forgive myself. I know I can prove to the Court,
15 the community, and the people that may no longer believe in
16 me that they can again.

17 Your Honor, I know I have failed. I believe I
18 paid for what I have done, confined in prison, serving my
19 probation. I have reestablished myself in society, becoming
20 a productive person. I believe I have done this to the best
21 extent I can. I would like to be able to be that productive
22 person, though, in the work that I love, the plumbing
23 industry.

24 I'm asking your Honor to reconsider the
25 restrictions that are upon me for 13 years, and in closing,

1 I want to thank you for your consideration and time today,
2 your Honor. If given the opportunity again to contribute to
3 the industry I love, I promise you I will not let you down.

4 THE COURT: Thank you, Mr. Martin.

5 THE DEFENDANT: Thank you, your Honor.

6 THE COURT: Mr. Engh?

7 MR. ENGH: This is a unique case. When I started
8 looking at the statute in response to some questions that
9 Mr. Martin had, I saw that there was a possibility of some
10 kind of redemption or a waiver of the 13 years, but there
11 wasn't a lot of case law on it. There's not a lot of
12 definition. The parties didn't find anything in the
13 circuits to speak of. It looks like the statute was sort of
14 an anti-mob statute passed a long time ago, but that really
15 doesn't really matter to us. The words are the words in the
16 statute and that's how we interpret them.

17 The question really today is whether he's been
18 rehabilitated. It's the position of the Government, of
19 course, that he hasn't been, and it's our position that he
20 has been, and the vexing issue, I think, is that there's no
21 standard to determine what rehabilitation is. This would
22 lead us to the great intersection of psychiatry and law,
23 that how can you tell someone has been changed, how can you
24 tell someone's not going to do the same thing again, how can
25 you tell a lesson has been learned, and it's not exactly

1 well defined. But we can, you know, establish some posits,
2 I think, as to how to deal with this.

3 Number one, he is 63.

4 Number two, if you let the 13 years lapse, he's
5 75. It would appear to be, in his family anyway, that the
6 early eighties are the end of the line.

7 He cannot be a plumber again. What you're missing
8 here is to look at his arms where they had the surgery to
9 try to attach the tendons again, and it's almost shocking,
10 really, what the life of plumbing can do to yourself. I
11 mean, it's -- and he was doing industrial, heavy plumbing.
12 He wasn't fixing toilets. So it's not like he can be a
13 plumber again.

14 THE COURT: I'm interested -- and I've forgotten.
15 I'm sure it's back in the file, but how long were you
16 actually a plumber before you became the business agent?

17 THE DEFENDANT: Fifteen years, your Honor.

18 THE COURT: How long were you doing the business
19 agent part of it?

20 THE DEFENDANT: Nineteen years, your Honor.

21 THE COURT: So it's been a long time since you've
22 actually done the labor part of it.

23 THE DEFENDANT: When released -- if I can, when I
24 was released from prison, your Honor, I went back to work
25 with the tools and I worked in the field.

1 THE COURT: Did you have some injury then, or is
2 the bicep problem and the arm problem from the years prior?

3 THE DEFENDANT: Yeah, from -- if you want to see
4 them, I'll show you.

5 THE COURT: All right. I mean, I'm fine to look
6 at them. I have a husband that just had knee replacement
7 surgery, so I've been looking at lots of injuries and
8 surgeries lately.

9 MR. ENGH: Tom, I think --

10 THE COURT: Can you roll up your sleeve so that I
11 can see your arm?

12 THE DEFENDANT: One surgery was not successful.
13 They had to take a nerve out of my right ankle and replace
14 it to my left (indicating) arm.

15 THE COURT: Okay. Sorry to take a detour you
16 didn't expect, Mr. Engh.

17 MR. ENGH: That's all right.

18 You know, the reason we asked for a hearing,
19 though, is something near and dear to the defense bar, I
20 think, and near and dear to Tom and his family, that there
21 should be a mechanism in law for some kind of forgiveness
22 after you've done your penance. This is rather a Judeo
23 ethic -- a Christian --

24 THE COURT: I think I read something about that in
25 the paper this morning in another context.

1 MR. ENGH: Okay. Well, I missed that article, but
2 I'm sure I'll --

3 THE COURT: I'm talking about all of the arguments
4 about Sara Jane Olson and the retribution and -- whole
5 different case than this.

6 MR. ENGH: There is something to that. I mean --
7 and the reason I thought that we should have a hearing is
8 that you should see him again after all these years, because
9 I think if there is a fault in the system -- and it's
10 certainly not your fault -- it's that we tend to forget
11 about people, and what happens is that this was a
12 tremendously important part of his life. And I didn't
13 defend him six years ago, but I was representing witnesses
14 back in that case and so ran into all the players and the
15 parties and I did do his appeal to the Eighth Circuit, so we
16 have known each other for a long time.

17 And the problem we're running into in law is that
18 if you're a felon, you're really restricted forever. I
19 mean, there's rent, it's hard to rent a place, it's hard to
20 get unemployment, it's hard to get even insurance, and we've
21 made it extremely difficult. He's very lucky because he has
22 a union pension of sixty thousand a year and he's got a
23 loving wife who's in the front row, but, you know, if he
24 were someone who hadn't been protected by his colleagues and
25 friends and hadn't had a union job, he'd almost be on the

1 street right now.

2 And what I think what he wants, I know he wants,
3 is some kind of redemption for his past misconduct. And he
4 is very much his father's son. So, you know, if you track
5 his life, it is true. He's got his failed marriage, his new
6 marriage.

7 And then the other thing he always talks about
8 besides his lovely wife is his father. It comes up in
9 almost every conversation I've ever had with him, unasked.
10 And so he feels as if he shamed his dad and shamed his union
11 and he'd like to somehow remedy that. And you can say
12 that's psychological hooey, but it really is, you know, the
13 root of his life, frankly, and it was in his union blood.
14 He can't take a nonunion job for a nonunion contractor,
15 because if he did that, he'd waive his pension.

16 And he's not in a position where he can work and
17 what he would like to do is either have the option of
18 working in union management again -- he's not there, he
19 can't even get elected, he doesn't have permission to run,
20 he can't really be active in the union -- or he would like
21 to work with a contractor who employees union individuals in
22 facilitating the work. Granted, the construction trades are
23 minimal, we know that, but sooner or later it will rebound,
24 we hope, and he'd like a second chance.

25 And it seems -- I mean, I just think the law

1 should be about second chances. I really believe that. And
2 if we're not about that, then we have thousands of littered
3 bodies all over the place that have destroyed themselves at
4 42 or 19 or 20. And he was by all our standards older when
5 he came to court on that major case that you had, and
6 so that's -- he'd like another opportunity. If we don't
7 give it to him now, it just doesn't pay to wait.
8 Logistically, he can't do it.

9 But I'd also -- there's kind of an in-between
10 position that you can take. You know, it's not an
11 all-or-nothing situation. I mean, I think you could
12 reinstate him or give him permission to work with abundant
13 conditions: You will do this, this and this in care of the
14 Department of Labor. We will ask you to comply with this
15 condition, that condition, this condition, that condition.
16 You know, there's a middle ground here that you can take.

17 The only exhibit we have is Exhibit 1, which I'll
18 give to your clerk. Those are the letters that he submitted
19 with his petition. We'd like you to review those.

20 THE COURT: All right.

21 MR. ENGH: I don't think they're in the court
22 file. I know I didn't scan them and put them in ECF because
23 some of the content is very personal.

24 THE COURT: Okay.

25 MR. ENGH: And I don't believe the Government has

1 any objection.

2 MR. GENRICH: No, your Honor.

3 THE COURT: All right. We'll receive that then,
4 and, Katie, you can mark that Defense Exhibit 1 if it isn't
5 already.

6 (Defense Exhibit 1 received in evidence)

7 THE COURT: Mr. Genrich.

8 MR. GENRICH: Well, thank you, your Honor.

9 As the Court knows, I was not the counsel for the
10 Government with respect to either Mr. Biernat's matter or
11 Mr. Martin's matter and have come onto this even later than
12 Mr. Engh, but the Government does have a position. And as
13 Mr. Engh indicated, there's sort of a paucity of authority
14 in these sorts of motions and it gives both Mr. Engh and the
15 Government somewhat of a free hand to shape their argument
16 based on what they think are the most important
17 considerations.

18 I do want to preface the Government's argument by
19 saying the Government doesn't seek to define Mr. Martin's
20 life by his criminal conviction. The Government doesn't
21 seek to make character attacks on Mr. Martin, to comment on
22 his close personal and family relationships, or undermine
23 any of the important personal considerations referenced both
24 by Mr. Martin and by Mr. Engh.

25 But the Government believes this motion is not

1 about a couple of other things. It's not about whether
2 Mr. Martin can be employed in any capacity, either outside
3 the union construction trade context or even within it.
4 Mr. Martin is not barred from being a union member, he's not
5 barred from accepting jobs related to union membership, and
6 he's not barred from being a plumber, from owning a plumbing
7 business, from working in some other capacity.

8 THE COURT: Are there positions that he could hold
9 that would not involve physical labor that would not violate
10 the 504 disqualification?

11 MR. GENRICH: Well, the statute defines the
12 excluded categories. It's the Government's position and
13 belief that should he work for a management organization
14 that deals with labor relations issues -- and I think this
15 Metro PHCC is an organization that deals quite closely with
16 union contracting and labor management relations -- or in a
17 union position, that the 504 exclusion would apply.

18 And as the Court knows and the Government's
19 position, part of the Government's concern -- and I
20 appreciate Mr. Engh addressing this -- is that there isn't
21 really any specificity in Defendant's request. It's still
22 unclear to the Government what position or positions it is
23 Mr. Martin would seek and what responsibilities those
24 positions would include.

25 THE COURT: But he's kind of barred at this point

1 from finding out much about that, is he not? I mean, the
2 statutory prohibition doesn't let him run for office and see
3 if he's elected, for example.

4 MR. GENRICH: No, but the statutory prohibition
5 would not prevent him making a motion with specificity to
6 the Court indicating that he has explored X, Y or Z
7 positions either within or without the union in a management
8 position. There have been some steps toward that. He
9 indicated to the Labor Department that he wanted to work for
10 Metro PHCC I think is the abbreviation, and the person
11 involved with that organization was interviewed by Labor and
12 provided a summary in the affidavit.

13 But the Government's not aware and with respect to
14 Defendant it's not the Government's burden to explore what
15 position it is that he seeks and what the responsibilities
16 would be. The Government doesn't believe he's prevented in
17 any way from saying to the Court, for example, "I'd like to
18 run for union office. I'm not going to run for union
19 treasurer," which would be a position very close to the
20 management of money and implicate in the Government's mind
21 the prior convictions, "but I do want to run as union
22 steward, and here, your Honor, is what the position of union
23 steward involves." The Government's not in a position to
24 evaluate a request like that because no request has been
25 made.

1 So, you know, I respectfully submit that the
2 Government believes both the Court and the Government is at
3 somewhat of a disadvantage to the extent the request here
4 is: "I don't want to be excluded from working in a
5 management-related position," and Mr. Martin is not at
6 liberty to go find a position that includes undefined
7 responsibilities. And that's why, although the Government
8 opposes this motion, the Government does believe that should
9 the Court grant the motion, Mr. Engh should be taken up on
10 the suggestion that first Mr. Martin identify to the Court
11 what position or positions it is he's seeking so the Court
12 can evaluate the appropriateness of those positions.

13 And secondly, that this be an exclusion and not a
14 reduction, meaning that the Court retains the ability to
15 supervise, even if from a distance, what sort of employment
16 activity Mr. Martin is engaged in and the Department of
17 Labor is given an opportunity to supervise in some sense
18 what it is Mr. Martin is doing.

19 So the motion is not fundamentally about whether
20 Mr. Martin works. It's about what type of position
21 Mr. Martin works in.

22 The Government's not in any position to dispute
23 his injuries. I would note that the Department of Labor
24 interviewed the employer for whom Mr. Martin did plumbing
25 work after he was released from prison. The employer

1 indicated that Mr. Martin stopped doing that work in part
2 because the market was slow and there wasn't enough work to
3 go around. But I'm in no position, you know, to dispute the
4 injury factor, but there is a record here that Mr. Martin
5 would be gainfully employed in the industry short of
6 assuming positions that in the Government's mind aren't
7 appropriate given the nature of the convictions.

8 THE COURT: Can you be specific about what those
9 positions would be, ways that he could be gainfully employed
10 in the industry without violating the --

11 MR. GENRICH: He can be a union member. He can do
12 plumbing work, whatever the limitations are physically.
13 He's not barred from the exclusion from being a plumber. He
14 would not be barred, for example, from running a plumbing
15 business, from employing other plumbers, from being the
16 person who does the bidding, soliciting the contracts,
17 et cetera, but operating a plumbing enterprise without doing
18 whatever work there may be physical limitations preventing
19 him from doing. You know, whether he could take a nonunion
20 job or not is something that the Labor investigators are not
21 clear about, but clearly he could work as a union plumber
22 and he could employ union plumbers to work on behalf of a
23 company that he established.

24 So, he can work in the industry. What the
25 Government is seeking is the exclusion remain in place with

1 respect to consulting management and labor management
2 positions or taking a union leadership position.

3 And again, while I think Mr. Engh and the Court is
4 correct that there aren't enough of these motions to really
5 flesh out a set standard, it's clear other courts have
6 looked at the nature of the offense, the nature of the
7 position sought and steps taken toward a clear demonstration
8 of rehabilitation.

9 And I know the Court -- I'm sure the Court has in
10 mind the nature of the offense here. I must admit that once
11 I reviewed the presentence report, it provided additional
12 detail that's not revealed, for example, in the Eighth
13 Circuit opinion about the pattern of conduct in this case.
14 And it's not true that Mr. Martin only compromised the
15 market recovery fund with respect to the Biernat matter. He
16 also compromised the fund with respect to four or five
17 friends and family members. And the Court also applied an
18 obstruction enhancement based on his conduct during the
19 investigation.

20 I understand the defense view that that's water
21 under the bridge and Mr. Martin's a changed man, but in
22 determining whether it's appropriate for Mr. Martin to
23 assume a position within a union or within a management
24 organization when he's been convicted of very serious crimes
25 that go not to offenses under the statute that don't relate

1 to union matters -- sexual assault was the example cited in
2 one case -- but go to the very heart of what it means to be
3 trusted with union funds that were collected from the dues
4 of union members, is something that the Court believes the
5 -- the Government believes the Court should strongly
6 consider in deciding whether a return to a management or
7 consultant-type position is appropriate, the signal it would
8 send to both labor and management. And the purposes behind
9 the statute which may have arisen out of organized crime,
10 but particularly when the exclusion was extended several
11 decades later from five to 13 years, were meant to protect
12 the integrity of unions and management, and appearances
13 matter.

14 And it's one of the points emphasized by those who
15 are opposed to reinstatement of Mr. Martin in the affidavit
16 that the nature of these offenses, that the compromise of
17 union funds supported by union dues are matters that are so
18 important, that the return of Mr. Martin to a position of
19 authority within a union or management would send a very
20 negative signal about the integrity of unions and the public
21 policy behind the Labor Management Relations Act.

22 You know, I'll just close, your Honor, unless the
23 Court has additional questions, with the rehabilitation
24 notion.

25 I share again Mr. Engh's threshold comments that

1 the standard is ill-defined, that rehabilitation doesn't
2 have a set meaning and there aren't factors defined in the
3 statute. But having said that, Mr. Martin, again, without
4 in any way impugning his character, hasn't demonstrated four
5 years out the sort of clear demonstration of rehabilitation
6 that would support reinstatement given the nature of the
7 offense, the nature of the positions sought, and the
8 interviews summarized by Labor, including the interviews of
9 those who support his reinstatement, given the fundamental
10 gaps in many of those individuals' understandings about what
11 it is that brought Mr. Martin before the Court in the first
12 instance.

13 The Government understands that Mr. Martin's -- in
14 some narrow sense in the Government's view his future
15 livelihood is at stake with respect to the type of position
16 he can assume, but the nature of the convictions, the
17 ill-defined nature of the positions sought and the precedent
18 from the other cases, your Honor, really leave the
19 Government in a position where it strongly states its
20 opposition to exemption under these circumstances and does
21 believe that the remaining nine of the original 13-year bar
22 should remain in place at this point.

23 THE COURT: All right. Thank you.

24 MR. GENRICH: Thank you, your Honor.

25 THE COURT: Mr. Engh, as the maker of the motion,

1 I'll give you the final word.

2 MR. ENGH: I appreciate my colleague's comments.

3 You know, it's one thing to say you haven't been
4 rehabilitated. It's quite another thing to say how you do
5 it. And so I'm mystified as to what he needs to show to
6 show that he's been rehabilitated. And so it's an argument
7 that, you know, has some emotional weight, but it's rather
8 vacuous, because there's no standard behind it. You just
9 haven't met the standard. We don't know what it is, but you
10 won't ever meet it.

11 And in terms of we don't know what he's going to
12 do in terms of jobs or running for office, perhaps that's my
13 fault. He came to see me. I told him he couldn't run for
14 office because that would be meddling in the union's
15 business and there would be no point in running for any
16 office, because once he got elected he'd be kicked out, and
17 if he did run, I thought he would be in violation of your
18 order. So, to say we don't know what job he's going to run
19 for is another cart before the horse. I mean, it's a nice
20 argument, but it's utterly --

21 THE COURT: But that is what you seek is for him
22 to run for an elective office.

23 MR. ENGH: Right. And, you know, they can reject
24 him. You know, I appreciate the Government's concerns. I
25 appreciate the PSI. It's been six years. And if the

1 membership wants to reject him, they can reject him, and if
2 he gets elected, you can put unbelievable restrictions on
3 him: no money, no checks, no fund --

4 THE COURT: How would I supervise that, though? I
5 mean, he's off supervision. I certainly don't want to
6 revisit supervision again.

7 MR. ENGH: He's on supervision with the Department
8 of Labor. They would supervise him, report to the Court on
9 the conditions. It's still a court order he has to do that.
10 It's also a Department of Labor order that they imposed as
11 well at the same time your sentence came down. He received
12 the same conditions that you gave him.

13 So, I mean, we should be in the position of giving
14 people a second chance, I really believe that, especially
15 when there's no articulation as to what he has to do other
16 than to say he hasn't done it.

17 THE COURT: All right. Well, I'm not going to
18 rule from the bench today. I'm going to take a more careful
19 look at the exhibits produced and the law. I looked at this
20 a few weeks ago and I think at the time I scheduled the
21 hearing and I want to review that, but there are a couple
22 things I would like to say today.

23 One of those is that I agree with Mr. Engh and I
24 think Mr. Genrich and the Government does too. There should
25 be second chances. I have no doubt about that. I think

1 I've provided them in some situations where appropriate from
2 time to time and within my ability to do so.

3 I did take -- "offense" is too strong a word. I
4 was a little bothered, Mr. Engh. You did make some
5 reference to we never in federal court ever see people after
6 they're sentenced, and that isn't true. I mean, I have made
7 efforts through the years to contact various defendants I've
8 sentenced. And so there is some process, not a good one and
9 I agree with you that there should be a more ideally
10 procedural way for a judge to evaluate the effect of our
11 sentences on people.

12 The other thing that I disagree with Mr. Engh on
13 a tad is that I don't think the case really in front of me
14 is about rehabilitation in the sense that are you a changed
15 person. I'm convinced you are and my decision isn't going
16 to be about whether I think you've learned something from
17 the process of being incarcerated or that I don't think it
18 had any effect on you. I think it had a strong effect on
19 you and I accept and believe you when you say you're a
20 changed man and that you appreciate things in life, small
21 pleasures, love of family, things that never occurred to you
22 before and that we all tend to take for granted, but after a
23 period of incarceration I know the world you see through
24 very different eyes than you did prior to your
25 incarceration.

1 So I don't think whatever I end up ruling means
2 that I don't think Mr. Martin has not been rehabilitated. I
3 think he's been significantly rehabilitated. The issue
4 that's posed to me is, is this statutory exemption and
5 disqualification, should it be applied in this situation,
6 and I look at it from a narrow legal perspective. I agree
7 with counsel there's not a whole lot of guidance for me out
8 there in how to apply the law, but I will take a careful
9 look at it and get you an order as soon as I can.

10 Thanks for coming in.

11 MR. GENRICH: Your Honor?

12 THE COURT: Yes?

13 MR. GENRICH: Could I just be heard on two quick
14 factual things without argument?

15 THE COURT: Sure.

16 MR. GENRICH: One is, the Labor investigators tell
17 me that Mr. Martin could be appointed to a union position if
18 there was a vacancy before some election period, so it's not
19 necessarily true that the union members would be the
20 threshold or the only voice in whether he would ascend to a
21 union position.

22 And second, I didn't want there to be a
23 misunderstanding. The Government's position isn't that
24 Mr. Martin should have run for union office and then
25 approached the Court. The Government's position is that

1 whether Mr. Martin ran for, for example, union treasurer and
2 said, "You know, I've got control over millions of dollars
3 of funds" or some other position, the Government may still
4 oppose the other position, but some other position that
5 doesn't involve control over funds, for example, which
6 relates to the offenses should be a material consideration
7 in whether the exemption is lifted for purposes of that
8 position. I agree with Mr. Engh's position --

9 THE COURT: Kind of a cart-and-horse situation,
10 though. I mean, at what point --

11 MR. GENRICH: Well, the Government's concern would
12 be if the exemption's lifted without definition, that
13 Mr. Martin could ascend to a position where the statutory
14 bar speaks more strongly than some position that doesn't
15 involve, for example, the management of funds. That's the
16 Government's point. Not that he should have run for office
17 beforehand, but that there should be a definition of what he
18 wants to do for the union so we can measure the statutory
19 prohibition against the requested exemption.

20 THE COURT: All right. I understand.

21 Did you wish to respond to that, Mr. Engh, or --

22 MR. ENGH: He has no intention of handling any
23 union funds or being a union treasurer or having anything to
24 do with the books and records.

25 THE COURT: All right. Thank you.

1 THE DEFENDANT: Thank you, your Honor.

2 (Proceedings concluded at 11:36 a.m.)

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7 C E R T I F I C A T E

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9 I, **TIMOTHY J. WILLETTE**, Official Court Reporter
10 for the United States District Court, do hereby
11 certify that the foregoing pages are a true and
12 accurate transcription of my shorthand notes,
13 taken in the aforementioned matter, to the best
14 of my skill and ability.
15

16
17
18 */s/ Timothy J. Willette*

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